



**Town of Arlington, Massachusetts**  
**730 Massachusetts Ave., Arlington, MA 02476**  
**Phone: 781-316-3000**

**webmaster@town.arlington.ma.us**

## Conservation Comm Minutes 02-01-2001

MINUTES, FEB. 1, 2001

Mr. Stevens called the meeting to order at 7:30pm in the 2nd floor conference room of the Town Hall Annex. Present were Corinna Beckwith, Nathaniel Stevens, Timothy Sullivan, David White and John Roche, and Judith Hodges of the Commission. Ingeborg Hegemann, BSC Consultants, was in attendance representing the Conservation Commission for the Mugar project, along with Keri Wozniak, Rizzo Associates, representing the applicant. Also present for the Mugar hearing were George Laite, Elsie Fiore, Diane Mahon, and Brian Rehrig.

### 7:30pm – MISCELLANEOUS

Brian Rehrig spoke to the Commission on Conservation Restrictions. Ten citizens, some of which belong to the Arlington Land Trust (ALT) are proposing a Town Meeting warrant article that supports the use of Conservation Restrictions. The Conservation Commission missed the deadline to be a signatory to the article but could support it at the Town Meeting. There is only one Conservation Restriction in the Town of Arlington. The development rights are deeded to the Conservation Commission. The owner in return gets a tax reduction. The State signs off on all Conservation Restrictions. In some towns, the Conservation Commission pursues these and holds these. Some towns, a Land Trust pursues and holds these. A donor can get a charitable deduction for the donation of the development rights if it is permanent through the state signed Conservation Restriction (CR). The Town's Selectmen must approve the CR before the state signs it. The evaluation constitutes the benefit to the public, questions of properties environmental worth. The Selectmen or Town Counsel would look to the Conservation Commission's for direction in determining the environmental worth of a parcel. The Board of Assessor's will also coordinate with the ALT in determining a policy for the reduction in value of the property. The Warrant Article language on this is a general statement of support. Mr. Roche made a motion to support the Warrant Article on Conservation Restrictions/Ms. Hodges seconded the motion. The vote to approve the motion was unanimous. The Commission will draft a letter of support.

### 8pm- MUGAR PARCEL, RT. 2, ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION, DISCUSSION AND DECISION

Mr. Stevens began the deliberations by explaining to the audience that the hearing is no longer open for outside comments but the Commission is going to discuss the presented materials. Mr. Stevens outlined the topic in front of the board, the wetland lines and the floodplain lines are before the board for approval. Mr. Roche asked if only the three voting members could participate in the discussion.

Ms. Hegemann advised that she asked DEP and Alexandra Dawson, Esq. of the Massachusetts Association of Conservation Commissions (MACC) and found that there was no direct case history that said that a Commissioner who had missed a meeting, but submitted testimony and read the minutes couldn't vote on the application. Mr. Stevens consulted with Town Counsel and was advised that he and others who missed hearings at which evidence was presented shouldn't vote. But this is only a matter for the vote, the discussion can be between the entire board.

The Commission began by discussing the wetland lines. Ms. Beckwith began by acknowledging the thoroughness of the wetland delineation by both consultants and expresses her intention to vote to approve these lines.

Mr. Stevens described the proposal that the applicant put forth that the flood plain is at 8.0 NGVD based on the 1982 FEMA study. Mr. Stevens outlined the materials submitted: the Flood Report by Rizzo, the 1996 storm report by the Army Corps of Engineers and the 1998 storm, maps from FEMA, table and profiles, multiple memoranda from BSC and Rizzo, the flood survey from the East Arlington Good Neighbor Committee and a map with the results shaded, a map from Rizzo that was submitted to show the culverts and flood plain connections, a long list of materials was submitted to BSC from the Commission and these were listed in a memo from BSC.

Mr. Stevens pointed to a 1984 memo from CDM, consultants who performed the flood study in 1982, to the Commission, in regards to the proposal from the same applicant for the Arlington Office Park, stating that they found

the 100 year flood elevation at 8.2 NGVD. It is also noted in this letter, the T project also used the floodplain elevation as 8.2, when going before the Cambridge Conservation Commission.

Mr. Stevens outlined that Rizzo proposed 8.0. BSC thought 8.2 was better. Then they had a meeting and BSC was convinced by the argument that a flood path across the bikepath might exist and agreed that 8.0 would be reasonable if survey was used to confirm the flood path. BSC also advised the Commission that 8.1 or 8.2 would be reasonable as taken directly from the FEMA study.

Mr. Stevens read the Wetlands Protection Act regulations concerning the definition of Land Subject to Flooding.

Ms. Beckwith began by reviewing the Mystic River Comprehensive Hydrologic Study by CDM which is the report that the FEMA study is based on. There were Technical Appendices that describe the modeling and the data used for the map. The information in the Mystic River Comprehensive Hydrologic Study doesn't seem to agree with that reported in the FIS study. It appears that the data was rounded off inaccurately. Small errors on the order of a tenth of a foot makes a large difference on the ground.

Ms. Beckwith stated her opinion to deny the flood plain interpretation based on the FEMA study. The information contained in the FEMA documents is questionable. There was ample testimony from the neighborhood that the flooding is worse. The 1996 Army Corps study made a comment that the FEMA studies are all outdated and the period of record was too short or inappropriate. They also state that if the storms of 1996 and 1998 were included in these records that the 100 year floodplain would be higher.

There have many large projects in the immediate area, which may have not had compensatory flood storage provided for: T station/garage, Rte 2 intersection with Alewife Brook Parkway with a proposed flood storage area at the MDC hockey rink near Lake Street (this project alone constituted 12 ac-feet of flood storage, was this provided or not? ), Route 2 widened from Lake St. to the old rotary and also from Lake St. to Belmont, the Interim Access Road to the T (proposed flood storage area next to cylindrical garage ramp, within Alewife Reservation, Tailtrack and Magnolia field improvements (fill on playing field, proposed 970,000 cubic feet fill, not compensated for).

Mr. Baethge, P.E, of BSC Group, Inc. stated in his January 5, 2001 memo that if the flood plain determination is wrong then additional flood plain storage could be lost since it would not be compensated for during any development in the area. This highlights the need for the flood plain determination to be as accurate as possible.

Ms. Beckwith presented information that might suggest that the Mugar property floods from the direction of Little River. Route 2 floods, overtops in the low spot near the Cambridge-Arlington Town boundaries. Mr. McClennan, Planning Director, had previously stated that the railroad grade where the bikepath was constructed was low and at grade to start. There was no ballast that was removed. The base was just gravel and it was left in place and paved over to construct the bikepath. There was probably no grade change in this area. A third hydrologic connection could exist under Route 2 along the route of the bikepath. This area also floods.

Ms. Beckwith requested that new survey be collected to support the argument of which flood route is appropriate, along all of the three routes, the Alewife below Route 2, Little River and the Route 2 bridge over the bikepath.

Ms. Beckwith organized a table of various flood plain elevations. The table contains thirty-four entries. The entries she highlighted were the high water marks survey results along the Alewife for the 1996 storm. The one in Bicentennial Park, near Mass Ave., 5.65, and two were at the Arthur D. Little property, at a power pole, 8.86, and the sign at main entrance, 8.97.

Ms. Beckwith outlined the results from the East Arlington Good Neighbor Committee flood survey. The group mapped their results on a plan sheet with spot elevations and some of the highest elevations where flooding was observed was 9.8 and 10.8. The information they collected was very variable and for different storms.

The MBTA in 1984 used 8.28 for the T station.

In 1980, DEQE (DEP) directed for MBTA Red Line Extension to use 8.73.

All of this information should be confirmed that they were all using the same base elevation.

In 1983 in the DEIR and NOI from the Arlington Office Park filing, the previous submittal on this property, the consultants discussed the topic of tailwater effects on this property occurring due to the coincident timing of peak flood events between the Alewife Brook and the Mystic River. In the most extreme conditions, the Alewife flows upstream.

The flood elevations can vary as much as 2.4 or 2.5 feet.

Rizzo made a comment in their Flood Report that they felt that the Mugar property ought to be a lot drier than it was in the past because the storm drainage system has diverted flows from the property. Ms. Beckwith wanted to clarify that while one drainage system flows around the property the second drainage system flows directly to the property.

Ms. Beckwith then proceeded to make her recommendation to the Commission to reject the flood plain delineation based upon the 1982 FEMA study as this information is now nearly 20 years old, doesn't consider subsequent large developments in the adjacent floodplain that potentially were not compensated for, and there are conflicting reports as to what the study says. She also strongly recommends that the Commission request as a condition of any future approval by this Commission or DEP that applicant give the Town the supporting information (topography and other hydrologic study information) for a Map Change for FEMA. This problem of dated, conflicting and potentially inaccurate information is the source of much aggravation on the part of land owners, planners, regulators and residents of East Arlington.

Ms. Beckwith further stated that if she were forced to choose an elevation from the available pool of information, she would choose, 8.97 NGVD, from the 1996 high water marks from the Army Corps survey. This location is directly across Route 2 from the property, most conservative, reflective of current conditions, and may still be too low if: 1) the tailwater effects were not coincident, 2) there was an error in accuracy of the high water mark, 3) the 1996 storm was smaller than a 100 year event. Mr. McClennan found that this storm was only a 60 year event for the Reed's Brook project on the other side of Town.

Ms. Beckwith also stated that no information was presented to the Commission on the accuracy of the flood plain modeling information. She stated that she strongly feels it is the responsibility of the applicant to provide the Commission with this supporting information and not the task of the Commission to pick and choose from a pool of possibly inaccurate information.

Mr. White expressed his concern over using the 1982 FEMA study information and he thinks it is important that the site floods from over Route 2.

The Commission then proceeded to deliberate on the appropriate regulations from the Wetlands Protection Act and the Arlington Bylaw for Wetlands Protection.

The Wetlands Protection Act states that the information that needs to be used to determine the 100 year flood plain elevation is the FEMA flood insurance study or other credible evidence.

The new local Bylaw just states generally that additional information can be obtained.

The old Bylaw was in effect at the time the ANRAD was filed. The old Bylaw states that the elevation of the statistically 100 year frequency storm should be used.

Ms. Beckwith asked the Commission and our consultant whether it was an appropriate use of our consultant fee (as defined in our bylaw) to conduct a new regional hydrologic study. The conclusion made by both was that this was not an appropriate use of that fee.

Ms. Beckwith outlined additional information that would be required in order to modify her opinion: the Technical Appendices to the Mystic River Comprehensive Hydrology study, the hydrology study for the Arthur D. Little site, the modeling information from SEA for the Cambridge CSO project, new survey of the flood routes from Little River, Alewife Brook and the bikepath bridge under Rte. 2, and confirmation of compensatory flood storage areas from the T garage and station, Rte 2/Alewife Brook Parkway intersection, Route 2 widening (above and below Lake Street), the Interim Access Road to the T station, The T tail track and pump station, Magnolia/Thorndike field improvements, at a minimum, as relevant and as necessary.

The rest of the Commission expressed their opinions. Mr. Roche acknowledged that reports of the residents that there is a significant problem. Mr. White expressed his concern with the 1982 FEMA study.

Mr. Sullivan presented his sentiment that since both consultants didn't reject the FEMA study, he would pick the 8.2 NGVD from the study.

Mr. White expressed his opinion that there is evidence to support the rejection of the FEMA study.

Mr. Stevens stated that he sees conflict in testimony and data and that he was not comfortable with FEMA, but if he accepted the study, he would choose 8.2 NGVD. Mr. Stevens stated that he thinks there is available information such as that from the Cambridge CSO project, that could bolster the arguments presented by the applicant.

Mr. Roche, stated that if he had to pick a number he would choose 8.2, but he thinks the residents claims should be considered heavily, if he had to vote he would vote with Ms. Beckwith.

Ms. Hodges stated her opinion that Ms. Beckwith's arguments were persuasive to her and she would support her opinion.

The Commission made a decision to vote on both the wetland lines and the floodplain determination under one permit since there was one application before the board.

Ms. Beckwith made a motion to accept the wetland lines as modified by our consultant, and to reject the flood plain determination, as presented to the Commission, and to require the applicant to provide us with more information either in support of the FEMA study or some other figure as listed above. Mr. White seconded it.

The Commission passed the motion two votes to one. The motion passed. Mr. Sullivan was the dissenting vote.

The Commission then proceeded with discussion on quorums and majorities of the Commission.

There was a lack of majority of the Commission for the vote. The decision cannot be acted upon. The other members of the Commission were not present at all of the hearings on this project, or were only Associate Members. Mr. Stevens consulted the minutes of the first hearing on September 7th and found that Mr. White was not present. Therefore his vote could not be counted. The vote on the motion is one to one. The motion doesn't pass or fail, it is still on the table.

Ms. Hegemann found in the Wetlands Protection Act Regulations, "action is to be taken of more than half the members present at a meeting of at least a quorum." Three members voted, and this is just half of the six members who are currently on the Commission. Only two of the members were at all the hearings.

The Commission discussed the possibility of reopening the hearing, with a new filing and summary of the information, in order to reconstitute the quorum.

Ms. Wozniak said she would report back to David Albrecht on this meeting and then Rizzo will inform the Commission on how they wish to proceed.

Ms. Beckwith will tentatively schedule the rehearing on February 15 at 8:15 pm.

The Commission quickly discussed new fees, new file number, new quorum, if the under the local bylaw, the project goes to court with this lack of decision.

10pm- MISCELLANEOUS, CONT.

An update by George Laite on the Bikeway encroachment as he attended Monday's Selectmen's meeting. He reported that several statements were made in support of full replacement and revegetation of the embankment. Mr. Laite asked the Commission if there is possibly flood plain on the property in question. The possibility exists since the property is in proximity to the Mill Brook.

The Commission will draft a letter to the Selectmen on this issue in support of full restoration of the open space along the bikepath.

Friend of Menotomy Rocks Park wrote in their newsletter that the Hills Pond weed eradication project is moving forward. Ms. Beckwith has had a phone call from Aquatic Technology regarding the permits.

Water chestnuts at the Arlington Reservoir, Ms. Beckwith will draft these. Roger Frymire requested the inclusion of hand removal by volunteers as well. A permit will also be filed with the Lexington Conservation Commission.

Mr. White reported that the current Reservoir plans include its use for Mill Brook flood control which will raise the water levels on occasion. It appears unlikely that the Reservoir water level will be kept continuously high for half of the year

as has been the recent practice. The borings seem to be concluded.

Friends of Alewife Reservation are looking for a statement of goals, purpose and role of the advisors. Ms. Beckwith said she would forward her request to the Commission by email.

Ms. Beckwith received a notification on an Architects presentation and workshops. Ms. Beckwith will forward the email to the Commission.

Enforcements were briefly discussed.

The budget can still be adjusted by presenting it to the Finance Committee before April.

A meeting with the Cambridge Conservation Commission and the Cambridge Dept. of Public Works on the CSO separation project is being scheduled on a separate date from our meetings. Probably in March, not on 1st and 3rd Thursdays.

The minutes of January 18 were drafted and sent to the Commission. The Commission voted to approve the January 18th minutes.

The Commission voted to convene at approximately 10:45pm.

Respectfully submitted,  
Cori Beckwith, Member and Administrator